



Board Agenda Item 29

DATE: August 9, 2022

TO: Board of Supervisors

SUBMITTED BY: Daniel C. Cederborg, County Counsel

SUBJECT: Settlement Agreement and Release with Lexington Insurance Company and the City of Fresno to Resolve Subrogation Lawsuit Related to Brix-Mercer Building

RECOMMENDED ACTION(S):

Approve and authorize Chairman to execute the Settlement Agreement and Release, by which the City of Fresno will pay \$25,000 to the County for its deductible for insurance coverage from Lexington Insurance Company for damage from the flooding of the Brix-Mercer Building.

Approval of the recommended Settlement Agreement and Release will resolve a subrogation lawsuit against the City related to a water main break and flooding on October 17, 2018, of the Department of Public Health laboratory, located at the basement of the Brix-Mercer Building. Lexington Insurance Company (“Lexington”) paid claims by the County in excess of \$11,046,016 and sought subrogation against the City for those payments and for the County’s deductible payment of \$25,000. Under the recommended Settlement Agreement and Release, within 30 days after all parties have signed, the City of Fresno (“City”) will pay a total sum of \$6,025,000 to settle this matter, with Lexington to receive \$6,000,000 for its claims paid and the County to receive \$25,000 for its deductible.

ALTERNATIVE ACTION(S):

If the Board does not approve the recommended action, then the County will not receive \$25,000 to resolve the case. Litigation will continue against the City.

FISCAL IMPACT:

There is no increase in Net County Cost association with the recommended action. Approval of the recommended Settlement Agreement and Release would allow the County to recoup the \$25,000 deductible it paid to Lexington for its insurance claim.

DISCUSSION:

The County is the owner of the Department of Public Health’s laboratory, located in the basement of the Brix-Mercer Building at 1221 Fulton Avenue, Fresno, CA.

On October 17, 2018, a water main, owned and operated by the City, burst along Fulton Avenue, resulting in water entering into the Brix-Mercer Building and flooding the basement laboratory.

The County is insured by Lexington for the damage caused by the water main burst and paid \$25,000 to Lexington for its deductible. Lexington paid claims by the County in excess of \$11,046,016 and sued the City in subrogation to recover on those payments and to recover the County’s deductible payment.

The recommended Settlement Agreement is the result of a June 17, 2022, mediation involving Lexington, the City, and the County.

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Settlement Agreement and Release

CAO ANALYST:

Ron Alexander